

ANDEAN TRADE PREFERENCE EXTENSION ACT OF 2008

FEBRUARY 25, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RANGEL, from the Committee on Ways and Means,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 5264]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 5264) to extend certain trade preference programs, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Andean Trade Preference Extension Act of 2008”.

SEC. 2. ANDEAN TRADE PREFERENCE ACT.

(a) EXTENSION.—Section 208 of the Andean Trade Preference Act (19 U.S.C. 3206) is amended by striking “February 29, 2008” and inserting “December 31, 2008”.

(b) TREATMENT OF CERTAIN APPAREL ARTICLES.—Section 204(b)(3) of the Andean Trade Preference Act (19 U.S.C. 3203(b)(3)(B)) is amended—

(1) in subparagraph (B)—

(A) in clause (iii)—

(i) in subclause (II), by striking “5 succeeding 1-year periods” and inserting “6 succeeding 1-year periods”; and

(ii) in subclause (III)(bb), by inserting “and for the succeeding 1-year period,” after “for the 1-year period beginning October 1, 2007,”; and

(B) in clause (v)(II), by striking “4 succeeding 1-year periods” and inserting “5 succeeding 1-year periods”; and

(2) in subparagraph (E)(ii)(II), by striking “December 31, 2006” and inserting “December 31, 2008”.

Amend the title so as to read:

A bill to extend the Andean Trade Preference Act.

I. INTRODUCTION

A. PURPOSE AND SUMMARY

H.R. 5264, the “Andean Trade Preference Extension Act of 2008,” would extend the Andean Trade Preference Act (“ATPA”), as extended and expanded by the Andean Trade Promotion and Drug Eradication Act (“ATPDEA”), through December 31, 2008. These programs are currently due to expire on February 28, 2008.

B. BACKGROUND

The original Andean Trade Preference Act (P. L. 102–182), passed in 1991, authorized the President to grant preferential trade benefits to Bolivia, Colombia, Ecuador and Peru in the form of duty-free treatment of eligible products. The purpose of the program was to provide the Andean countries with legal economic alternatives to the cultivation and production of illicit narcotics. The program extended duty-free treatment to most products not considered import sensitive in the United States, for a period of 10 years.

The ATPA program was expanded and renewed by the Andean Trade Promotion and Drug Eradication Act (P. L. 107–210) on August 6, 2002. The ATPDEA expanded trade preferences for the Andean countries to include approximately 700 products that were previously excluded under ATPA, including: certain textiles, apparel, footwear, articles of leather and tuna in airtight containers. The 2002 legislation also provided that ATPA/ATPDEA benefits would apply until December 31, 2006. ATPA/ATPDEA have subsequently been extended twice, and are currently scheduled to expire on February 29, 2008.

According to the U.S. International Trade Commission (“ITC”), trade with Andean countries has grown significantly under both ATPA and ATPDEA. U.S. imports from the region grew from \$4.9 billion in 1991 to \$22.5 billion in 2006. U.S. exports to the region have also increased during that time frame, tripling from 1991 to 2006. According to some estimates, as many as 2 million jobs may be dependent on ATPA in the Andean region. Secretary Rice has noted that “there is a strong possibility that thousands of [these] jobs will be lost to Asia, possibly China,” if the programs are not renewed.

At the same time, both Bolivia and Ecuador have taken steps that raise important concerns about their treatment of foreign investors. For example, Bolivia passed a new mining law that would create an additional surtax which could result in 90% of company profits going to the Bolivian Government. The measure has negatively impacted at least one U.S.-based firm, Apex Silver Mines Limited, which has significant investments in Bolivia. Similarly, the government of Ecuador has taken actions against a number of U.S.-owned firms (including Occidental Petroleum, City Oriente, and Chevron Texaco). The current administrations of Bolivia and Ecuador have also engaged in actions and rhetoric that undermine the strong relationship the United States has maintained—and would like to continue to maintain—with both countries. The Committee notes that, at this time, neither country has been found to be in violation of ATPA/ATPDEA’s eligibility criteria. Nonetheless, the Committee urges the Administration—in particular, the U.S.

Trade Representative, who is responsible for monitoring these important criteria—to ensure that each ATPA/ATPDEA beneficiary country is complying fully with each of the programs’ criteria.

C. LEGISLATIVE HISTORY

H.R. 5264 was introduced on February 7, 2008, by Chairman Rangel. The bill was referred to the Committee on Ways and Means. The bill, as introduced, would have extended the three preference programs scheduled to expire in 2008—ATPA/ATPDEA, the Caribbean Basin trade preference program (“CBTPA”), and the Generalized System of Preferences (“GSP”)—until September 30, 2010. The introduced bill would also have made two changes to the textile provisions of the African Growth and Opportunity Act (AGOA) and amended the operation of certain “competitive need limitation” (“CNL”) provisions under GSP.

On February 14, 2008, the Committee on Ways and Means met to consider H.R. 5264. At that time, Chairman Rangel offered an amendment in the nature of a substitute, which was adopted by voice vote. The amendment was limited to a 10-month extension of ATPA/ATPDEA; none of the provisions on CBTPA, GSP, or AGOA was retained. No other amendments were offered by any Member of the Committee.

II. SECTION-BY-SECTION SUMMARY

SECTION 1: SHORT TITLE

Present law

No provision.

Explanation of provision

Section 1 of H.R. 5264 provides that the Act may be cited as the “Andean Trade Preference Extension Act of 2008”.

Reason for change

This section names the legislation for identification purposes.

SECTION 2: ANDEAN TRADE PREFERENCE ACT

Present law

The provisions of ATPA/ATPDEA currently expire on February 29, 2010, with the exception of the bilateral emergency action provisions of Section 204(b)(3)(E)(ii)(II) (19 U.S.C. 3203(b)(3)(B)(E)(ii)(II), which expired on December 31, 2006.

Explanation of provision

Section 2(a) extends the ATPA, as amended and expanded by the ATPDEA, until December 31, 2008. Section 2(b) makes necessary conforming changes to the textile provisions of ATPA/ATPDEA and to the bilateral emergency action provisions of Section 204(b)(3)(E)(ii)(II) (19 U.S.C. 3203(b)(3)(B)(E)(ii)(II).

Reason for change

These sections of H.R. 5264 are necessary to extend the provisions of the ATPA/ATPDEA until December 31, 2008.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statements are made concerning the vote of the Committee on Ways and Means in its consideration of the bill H.R. 5264.

MOTION TO REPORT THE BILL

The bill, H.R. 5364, was ordered favorably reported by voice vote (with a quorum being present).

IV. BUDGET EFFECTS

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 3(d)(2) of the rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of this bill, H.R. 5264, as reported: The Committee agrees with the estimate prepared by the Congressional Budget Office ("CBO") which is included below.

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with subdivision 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the provisions of H.R. 5264 would reduce customs duty receipts due to lower tariffs imposed on goods from the Andean countries (Bolivia, Colombia, Ecuador, and Peru).

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by CBO, the following report prepared by CBO is provided.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 22, 2008.

Hon. CHARLES B. RANGEL,
*Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5264, a bill to extend the Andean Trade Preference Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Zachary Epstein.

Sincerely,

ROBERT A. SUNSHINE
(For Peter R. Orszag, Director).

Enclosure.

H.R. 5264—A bill to extend the Andean Trade Preference Act

H.R. 5264 would extend the provisions of the Andean Trade Preference Act (ATPA). The Congressional Budget Office (CBO) estimates that the bill would reduce revenues from customs duties by

\$82 million in 2008 and \$37 million in 2009, totaling \$119 million over the 2008–2009 period.

Under the bill, the ATPA trade preferences, which are scheduled to expire on February 29, 2008, would be extended for 10 months, through December 31, 2008. First enacted in 1991 and later expanded in 2002, the ATPA provides reduced-duty or duty-free access to certain U.S. imports from Bolivia, Colombia, Ecuador, and Peru. (A free trade agreement with Peru, which is currently being implemented, would eventually supersede that country's ATPA preferences). According to the United States Trade Representative, about 60 percent of total U.S. imports from the beneficiary countries were entered under the ATPA program, and those imports consisted primarily of petroleum-based products and apparel.

CBO has determined that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO contact for this estimate is Zachary Epstein. This estimate was approved by G. Thomas Woodward, Assistant Director for Tax Analysis.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to clause 3(c)(I) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee, based on past public hearings and testimony and information from the Administration, concluded that it is appropriate and timely to consider H.R. 5264 as reported.

B. SUMMARY OF FINDINGS AND RECOMMENDATIONS OF THE GOVERNMENT REFORM AND OVERSIGHT COMMITTEE

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives is required.

C. CONSTITUTIONAL AUTHORITY STATEMENT

With respect to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, relating to Constitutional Authority, the Committee states that the Committee's action in reporting the bill is derived from Article 1 of the Constitution, Section 8 ("The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and to provide for . . . the general Welfare of the United States.")

D. INFORMATION RELATION TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (P. L. 104–4) ("UMRA"). The Committee has determined that the non-tax provisions of the bill do impose federal mandates on the private sector by extending the customs user fees. The aggregate costs of those mandates the annual threshold established in UMRA for private-sector mandates (\$131 million in 2007, adjusted annually for inflation) in 2015.

The Committee has determined that the bill does not impose a federal intergovernmental mandate on State, local, or tribal governments.

E. LIMITED TAX BENEFITS

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, the Ways and Means Committee has determined that the bill as reported contains no congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of that Rule.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ANDEAN TRADE PREFERENCE ACT

TITLE II—TRADE PREFERENCE FOR THE ANDEAN REGION

* * * * *

SEC. 204. ELIGIBLE ARTICLES.

(a) * * *

(b) EXCEPTIONS AND SPECIAL RULES.—

(1) * * *

* * * * *

(3) APPAREL ARTICLES AND CERTAIN TEXTILE ARTICLES.—

(A) * * *

(B) COVERED ARTICLES.—The apparel articles referred to in subparagraph (A) are the following:

(i) * * *

* * * * *

(iii) APPAREL ARTICLES ASSEMBLED IN 1 OR MORE ATPDEA BENEFICIARY COUNTRIES FROM REGIONAL FABRICS OR REGIONAL COMPONENTS.—(I) * * *

(II) The preferential treatment referred to in subclause (I) shall be extended in the 1-year period beginning October 1, 2002, and in each of the [5 succeeding 1-year periods] *6 succeeding 1-year periods*, to imports of apparel articles in an amount not to exceed the applicable percentage of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available.

(III) For purposes of subclause (II), the term “applicable percentage” means—

(aa) * * *

(bb) for the 1-year period beginning October 1, 2007, and for the succeeding 1-year period, the percentage determined under item (aa) for the 1-year period beginning October 1, 2006.

* * * * *

(v) CERTAIN OTHER APPAREL ARTICLES.—

(I) * * *

(II) LIMITATION.—During the 1-year period beginning on October 1, 2003, and during each of the [4 succeeding 1-year periods] 5 succeeding 1-year periods, apparel articles described in subclause (I) of a producer or an entity controlling production shall be eligible for preferential treatment under this paragraph only if the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that are used in the production of all such articles of that producer or entity that are entered and eligible under this clause during the preceding 1-year period is at least 75 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all such articles of that producer or entity that are entered and eligible under this clause during the preceding 1-year period.

* * * * *

(E) BILATERAL EMERGENCY ACTIONS.—

(i) * * *

(ii) RULES RELATING TO BILATERAL EMERGENCY ACTION.—For purposes of applying bilateral emergency action under this subparagraph—

(I) * * *

(II) the term “transition period” in section 4 of the Annex shall mean the period ending [December 31, 2006] *December 31, 2008*; and

* * * * *

SEC. 208. TERMINATION OF PREFERENTIAL TREATMENT.

No duty-free treatment or other preferential treatment extended to beneficiary countries under this title shall remain in effect after [February 29, 2008] *December 31, 2008*.

VII. VIEWS

ADDITIONAL VIEWS ON H.R. 5264, THE “Trade Preference Extension Act of 2008”

I. INTRODUCTION

We support the Chairman’s mark to H.R. 5264, which would extend by ten months the Andean Trade Preferences and Drug Eradication Act (ATPA). It will provide a bridge for Peru until the U.S.-Peru Trade Promotion Agreement enters into force. It will avoid disruption in Colombia while Congress works on implementing the U.S.-Colombia Trade Promotion Agreement this year. It will provide benefits to Ecuador and Bolivia to maintain stability in the region, but we will be watching carefully to make sure that the climate for U.S. investors in these two countries drastically improves—extending preferences for these two countries should not be seen as a validation of the very disturbing trade and investment practices there. We insist on improvement.

II. EXTENSION OF THE ANDEAN TRADE PREFERENCES AND DRUG ERADICATION ACT

We note that if a Member of Congress is willing to open the U.S. market to imports, then it makes sense for that Member to support two-way trade that would also benefit U.S. exporters through the passage of reciprocal FTAs. A reciprocal FTA would eliminate all uncertainty that could surround the future expiration of the preferences and would level the playing field for U.S. exporters, contributing to an improvement in the U.S. trade balance. For example, when the United States went from providing one-way access to imports from Central American countries to a bilateral FTA in the CAFTA, our \$1.3 billion trade deficit with those countries has changed to a trade surplus of \$3.7 billion.

Congress has the opportunity to replicate that CAFTA success by passing the U.S.-Colombia Trade Promotion Agreement. The Democrat Leadership’s refusal to act so far on this Agreement means that the U.S.-Colombia trade relationship is one-sided to Colombia’s benefit. More than 99 percent of total Colombian exports to the United States are already duty-free (measured by tariff line) because of the preferences. By contrast only 2.7 percent of U.S. exports to Colombia are currently duty-free. More than 89 percent of Colombian agriculture exports to the United States are already duty-free (measured by tariff line) because of the preferences. No U.S. agriculture exports to Colombia receive duty-free treatment today. The average U.S. tariff paid by imports from Colombia in 2006 was only 0.1 percent because of the preferential access to the U.S. market. In contrast, the average tariff paid by U.S. exports to Colombia was 11.2 percent. The U.S.-Colombia Trade Promotion

Agreement will reduce the average tariff faced by U.S. exporters by more than 68 percent, from an 11.2 percent average duty to 3.6 percent immediately upon implementation of the Agreement.

In addition, not acting on the U.S.-Colombia Trade Promotion Agreement threatens to worsen further the competitiveness of U.S. exporters in the Colombian market. Canada and the EU are negotiating FTAs with Colombia right now and expect to finish shortly. These competitors export the same products to Colombia as the United States, such as wheat, barley, advanced electronics, aircraft, and chemicals. If Congress passes the U.S.-Colombia FTA now, we could give US companies a competitive head start against Canada and the EU. Any delay in passing the FTA will put U.S. companies at a disadvantage against their top competitors.

Many Members of Congress have expressed concern about the level of violence against labor union members in Colombia. We believe that the Uribe Administration has made tremendous progress in reducing the level of violence in Colombia and has specifically targeted violence against labor union members. According to the U.S. Department of State: since 2000, the number of homicides declined by 39 percent, kidnappings declined by 83 percent, and terror attacks declined by 61 percent. In 2006 the murder rate was the lowest in 15 years and is now lower than the murder rates in Washington, D.C. and Baltimore, MD. The number of homicides involving labor union members has declined from 205 in 2001 to 20 in 2007. We note that Amnesty International has found that some of the murders of labor union members were at the hands of the guerilla groups, e.g. FARC.

These improvements are the direct result of many important policies implemented by the Colombian Government which has established a dedicated program with over 100 investigators and prosecutors to deal exclusively with cases of violence against labor leaders. Funding for the Prosecutor General's office has increased by 50 percent since 2002, and Colombia is spending \$38 million to provide protection for labor union members. Carlos Rodriguez, President of the United Workers Confederation stated, "Never, in the history of Colombia, have we achieved something so important."

Additionally, Colombia amended its Constitution to make significant reforms to its judicial system. These reforms are accelerating the investigation and trial process considerably. The Colombian Government has agreed to the creation of a permanent ILO representative in Colombia to monitor developments and provide advice. The Colombian Government has extended its agreement with the UN to have an office of the High Commissioner for Human Rights in Colombia to observe and advise on human rights issues. The UN High Commissioner noted the important contributions made by the Constitutional Court, Procurator General's Office, and the Ombudsman's Office in protecting human rights in Colombia. The UN High Commissioner also cited a greater commitment on the part of the Colombian authorities in seeking to achieve the objectives of the UN's recommendations.

Many Colombian labor union leaders, representing 79,000 Colombian workers in the productive sector, recognized the progress and

continued effort that the Colombian Government has made in reducing labor violence and wholeheartedly support the FTA.

III. THE NEED FOR ADDITIONAL CONGRESSIONAL ACTION ON OTHER PREFERENCE PROGRAMS

H.R. 5264 as originally introduced made a number of changes to other U.S. trade preference programs, specifically the Generalized System of Preferences (GSP), the Caribbean Basin Trade Partnership Act (CBTPA/CBI), and the African Growth and Opportunity Act (AGOA). We support the use of trade preference programs to encourage economic development and engagement in the international economy in developing countries, especially the least-developed countries such as those that benefit from the AGOA program. However, the inclusion of these changes, a number of which are controversial, would unnecessarily complicate and delay the extension of the ATPA, which is the only program that is about to expire.

JIM McCRERY.
WALLY HERGER.
DAVE CAMP.
JIM RAMSTAD.
SAM JOHNSON.
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